

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

IN RE

SEARS HOLDINGS CORPORATION, ET AL

DEBTOR

CHAPTER 11

CASE NO. 18-23538 (RDD)

(Jointly Administered)

MOTION DATE: February 14, 2019

MOTION TIME: 10:00am

**AFFIRMATION IN SUPPORT GRANTING RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)
NUNC PRO TUNC**

Wells Fargo Bank, N.A. as servicing agent for Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1, Asset-Backed Certificates, Series 2006-1 by and through its attorney, Shapiro DiCaro & Barak, LLC is seeking an Order vacating the automatic stay pursuant to 11 U.S.C §362(d) nunc pro tunc as of October 15, 2018, and in support thereof, states as follows:

Michael J. Chatwin, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District Court for the Southern District of New York, hereby affirms the following to be true under penalty of perjury:

1. I am a member with the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Wells Fargo Bank, N.A. as Servicing Agent for Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1 Asset-Backed Certificates, Series 2006-1. As such, I am fully familiar with the facts and circumstances of this case.

RELIEF REQUESTED

2. This is a contested matter brought pursuant to the Federal Rules of Bankruptcy Procedure Rules 4001, 9014 and Section 362(d) of Title 11 of the United States Code (the “Bankruptcy Code”), for an Order: (i) pursuant to Bankruptcy Rule 4001 and 362(d) seeking relief from the Automatic Stay as to real property known as 845 East 219th Street, Bronx, New York 10467 (the “Premises”), (ii) waiving the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001(a)(3); and (iii) granting Movant such other and further relief as is just and proper under the circumstances of this case.

3. This Court has jurisdiction pursuant to 28 U.S.C. Section 1334. This is a core proceeding pursuant to 28 U.S.C. Section 157 (b)

BACKGROUND

4. On October 15, 2018 (the “Petition Date”), Sears Holdings Corporation, et al and the other above-captioned debtors each filed voluntary petitions under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to manage and operate their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. On November 28, 2003 Sears Roebuck and Co recorded a judgment lien against Bradley B. Ruty and the Property in the amount of \$4,305.10 under Index # B03-57256. A copy of said lien is annexed hereto as **Exhibit “B”**.

6. On January 20, 2006, Bradley and Lorna Ruty borrowed \$315,000.00 from Fremont Investment & Loan as evidenced by a note (the “Note”). Said Note is secured by a mortgage from Bradley and Lorna Ruty on certain real property, commonly known as 845 East 219th Street, Bronx, New York 10467, and specifically described in said mortgage (the “Property”). The Mortgage was assigned from Mortgage Electronic Registration Systems, Inc. as nominee for

Fremont Investment Loan to Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1. Copies of the Note, Mortgage and Assignment of Mortgage are annexed hereto as **Exhibit "A"**.

7. Based upon information provided by the movant, the mortgage is in default and movant is proceeding with a foreclosure of its mortgage. Sears Roebuck and Co. holds a judgment against Bradley B. Ruty, the co-owner and co-mortgagor. A copy of said Judgment is annexed hereto as **Exhibit "B"**.

8. As Sears Roebuck and Co is a judgement creditor of Mr. Ruty, they are a necessary party defendant in the foreclosure.

9. Sears Holdings Corporation, et al filed bankruptcy under case number 18-23538, which case is being jointly administered. As a result of this bankruptcy filing, movant is stayed from proceeding with its foreclosure.

10. As of December 13, 2018, the approximate payoff of the mortgage held by movant is \$532,423.46.

11. According to the Residential Appraisal Report dated October 5, 2018 which is annexed hereto as **Exhibit "C"** the fair market value of the Property is \$715,000.00.

12. In light of the pending bankruptcy petition Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1 Asset-Backed Certificates, Series 2006-1 cannot proceed with a foreclosure naming Sears Roebuck and Co. as a party defendant.

13. The Motion for the Judgment of Foreclosure, referenced in paragraph 7 hereinabove, was held on March 9, 2018 but was not entered until October 24, 2018, subsequent to the filing of the within bankruptcy. As such, Movant is respectfully requesting the stay be lifted nunc pro

tunc so as to validate the entered Judgment of Foreclosure which was entered several days after the filing.

14. By reason of the foregoing, Wells Fargo Bank, N.A. its servicing agent, nominees, successors and or assigns respectfully requests relief from the automatic stay.

15. It is requested that, an Order Granting Relief from the Automatic Stay survive conversion to any other chapter.

16. No prior application has been made for the relief requested herein.

17. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. § 362 to allow Deutsche Bank National Trust Company, as Trustee for Freemont Home Loan Trust 2006-1, Asset-Backed Certificates, Series 2006-1 to maintain a foreclosure action on its mortgage. It is further requested that this Court waive the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001 (a)(3) so Movant may immediately commence and /or resume the foreclosure proceedings.

WHEREFORE, Movant respectfully requests an Order of this Court be granted vacating the automatic stay nunc pro tunc as to the aforementioned Property; allowing Movant, its agents, assigns or successors in interest, leave to exercise its rights pursuant to the Note and Mortgage including but not limited to foreclose the Mortgage secured by the subject Property; waiving the fourteen (14) day stay pursuant to F. R. B. P. 4001(a)(3); and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: December 28, 2018



Michael J. Chatwin
Bankruptcy Attorney
Shapiro, DiCaro & Barak, LLC
Attorneys for Wells Fargo Bank, N.A. as Servicing
Agent for Deutsche Bank National Trust Company,
as Trustee for Fremont Home Loan Trust 2006-1,
Asset-Backed Certificates, Series 2006-1
175 Mile Crossing Boulevard
Rochester, New York 14624
Telephone: (585) 247-9000
Fax: (585) 247-7380